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Letter dated 19 January 2018 from the Secretary-General addressed to the President of the Security Council

I am pleased to inform the members of the Security Council that, in response to a request made by the Government of Mali on 5 April 2016, and taking into consideration article 46 of the Agreement on Peace and Reconciliation in Mali, I have decided to establish an International Commission of Inquiry to investigate allegations of abuses and serious violations of international human rights law and international humanitarian law, including allegations of conflict-related sexual violence, committed in the territory of Mali from 1 January 2012 to the date of the establishment of the Commission.

This decision is also consistent with and in furtherance of Security Council resolution 2364 (2017), paragraph 20 (a) (iii), in which the Council decided that one of the priority tasks of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), under its mandate, would be to support the implementation of the reconciliation and justice measures of the Agreement, including with respect to the establishment and operations of an international commission of inquiry.

The International Commission of Inquiry will be composed of three members with established reputations for their probity and impartiality: Lena Sundh (Sweden), Chair; Simon Munzu (Cameroon); and Vinod Boolell (Mauritius). The work of the members of the Commission will be supported by a secretariat composed of United Nations personnel, for which temporary positions will be established by MINUSMA.

I also wish to take this opportunity to advise the Council that, within the framework of the Agreement Monitoring Committee, the signatory parties to the Agreement have determined that the Truth, Justice and Reconciliation Commission, also envisioned in the provisions of article 46, will examine alleged human rights violations that occurred between 1960 and 2013, while the International Commission of Inquiry will consider those events that occurred from 1 January 2012 to the date of its establishment.

I expect the findings of the Commission to complement and help advance ongoing efforts to fight impunity by competent Malian authorities and the International Criminal Court.

I would be grateful if you could bring the present letter and its annex, consisting of the terms of reference of the International Commission of Inquiry, to the attention of the members of the Security Council.

(*Signed*) António **Guterres**

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Annex

International Commission of Inquiry established by the Secretary-General to investigate allegations of abuses and serious violations of international human rights and international humanitarian law, including allegations of conflict-related sexual violence, committed throughout the territory of Mali between 1 January 2012 and the date of the establishment of the Commission

Terms of reference

I. Mandate

1. In response to a request from the Government of Mali, in a letter dated 1 July 2014 addressed to the Secretary-General, which was subsequently reiterated before the Security Council on 5 April 2016; considering the Agreement on Peace and Reconciliation in Mali emanating from the Algiers process (hereinafter, the «Mali Peace Agreement»), particularly its article 46; and in conformity with paragraph 20 (a) (iii) of Security Council resolution 2364 (2017) of 29 June 2017, pursuant to which the Council entrusted the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) with the mandate to support the establishment and operations of an international commission of inquiry, in consultation with the parties to the Agreement, as a priority task in support of the implementation of Agreement; the Secretary-General has decided to establish, for a period of one year, an International Commission of Inquiry, which shall:

(a) Investigate allegations of abuses and serious violations of international human rights law and international humanitarian law, including allegations of conflict-related sexual violence, committed throughout the territory of Mali between 1 January 2012 and the date of the establishment of the Commission;

(b) Establish the facts and circumstances concerning the commission of such abuses and violations, including those that may constitute international crimes, and identify those allegedly responsible for such abuses and violations;

(c) Submit a written report on its investigation and its conclusions to the Secretary-General within a year from the date of the effective commencement of its work. In the report, the Commission will also present recommendations to the Secretary-General and all competent authorities, with a view to combating impunity in relation to the abuses and violations identified.

II. Composition of the Commission

2. The Commission will be composed of three independent experts of high moral standing, with recognized expertise. They will be selected by the Secretary-General, who shall also recruit the support staff of the Commission.

3. The Secretary-General will designate one of the three members of the Commission as its Chair.

4. Gender balance will be fully taken into account in the selection of the members of the Commission, who will have the required expertise, including in regard to the following criteria:

(a) Expertise or in-depth knowledge of international human rights law and/or international humanitarian law and/or international criminal law;

(b) Expertise or in-depth knowledge of principles, rules and procedures regarding fact-finding or investigation processes;

(c) Expertise or in-depth knowledge of issues relating to violence against persons, including sexual violence, violence against persons who are particularly vulnerable, including children, and other abuses and violations that may constitute international crimes;

(d) Solid knowledge about the Malian and regional contexts (in particular the historical, sociological and cultural contexts);

(e) Good working knowledge of French and, where possible, of local languages spoken in Mali.

III. Essential requirements, privileges and immunities, and facilitation of the work of the Commission and of its members

5. French shall be the working language of the Commission.

6. The Commission shall enjoy the full cooperation of the Government of Mali and of all the signatory parties to the Mali Peace Agreement in the implementation of its mandate. It shall have full and unhindered access to all persons and authorities it wishes to consult. The Commission shall also be free to address requests for cooperation to third States, intergovernmental organizations and non-governmental organizations and to their respective representatives, with a view to gathering all information, documents and declarations that it deems relevant to its work.

7. The Commission shall be granted the following facilities, freedoms and guarantees by the Government of Mali and, as applicable, by the signatory parties to the Mali Peace Agreement:

(a) Inviolability of its premises and archives, as well as of its property, funds and assets;

(b) Full and unrestricted freedom of movement throughout the territory of Mali;

(c) Free and unhindered access to all places and buildings, including sites where abuses or serious violations of international human rights and international humanitarian law are alleged to have taken place, as well as to prisons and detention centres;

(d) Full and unhindered freedom to meet with and interview all persons, including representatives of national and local authorities, members of the security forces and victims, witnesses and other persons, who committed serious violations or abuses of human rights or international humanitarian law, including persons accused or indicted. This shall include the freedom to meet with such persons in private and with due respect for confidentiality, should the Commission deem it necessary. The members of the Commission and its support personnel shall further have the right to hold meetings and interviews with persons detained or imprisoned, without the presence of the relevant penal authorities;

(e) Full and unhindered access to all sources of information, documents and materials, including official archives and documents or materials in the possession of investigative, prosecutorial and judicial authorities;

(f) All appropriate security arrangements for the members, personnel and documents of the Commission, without restricting the Commission's freedom of

movement and its ability to conduct its work, and without infringing upon its confidentiality requirements and its independence;

(g) All guarantees for the security and safety of victims and witnesses and their families cooperating or associated with the Commission and its work, by the competent authorities. Any person who contacts, meets with or is interviewed by the Commission or who provides it with information shall not, on account of having done so, be subjected to harassment, threats, acts of intimidation, reprisal or criminal prosecution.

8. The Government of Mali and the signatory parties to the Mali Peace Agreement shall respect the unrestricted freedom of all persons to contact the Commission and to provide it with information, documents and materials, including representatives of national or local authorities, members of the defence and security forces, representatives of third States and representatives of intergovernmental and non-governmental organizations.

9. The Government of Mali shall accord the privileges, immunities and facilities necessary for the independent conduct of its work to the Commission, the members of the Commission and the support staff of the Commission. In particular:

(a) The members of the Commission and all persons performing functions for the Commission who are not United Nations officials shall enjoy the privileges and immunities granted to experts on mission pursuant to articles VI and VII of the 1946 Convention on the Privileges and Immunities of the United Nations, to which Mali is a party;

(b) In addition to the privileges and immunities stipulated in articles V and VII of the Convention, all United Nations officials serving with the Commission shall enjoy the immunities from personal arrest or detention and from search and seizure of their personal baggage, as well as the inviolability of their papers, documents and data, either in physical or in electronic form;

(c) All the documents and materials created, gathered or held by the Commission, irrespective of their nature, content or form, including any recordings, shall be deemed the property and archives of the United Nations, which, as such, are inviolable, consistent with article II, sections 3 and 4, of the Convention and paragraph 9 (a) above;

(d) If the Chair so requests, the Government will provide, without cost, suitable premises to the Commission.

IV. Protection of victims and persons who provide information to the Commission

10. The competent Malian authorities shall be responsible for the protection of those who cooperate with the Commission and their family members. The safety and security of all such persons further depend on the cooperation of all parties concerned. The Commission does not, in and of itself, have the means to guarantee the protection of such individuals and their families from threats or retaliation due to their cooperation with the Commission. The Commission will nevertheless take all necessary measures within its power to ensure their protection, including by seeking support from MINUSMA. To that end, the Commission shall adopt procedures and methods of work aimed at protecting such persons during all stages of its work and thereafter, including confidentiality requirements.

11. Upon commencing its work, the Commission will consult the competent authorities and the parties concerned so as to activate an early warning and support

system for victims and persons who cooperate with the Commission and their family members in case of danger or threat proffered against them. The Commission may also request the support of MINUSMA to this effect.

V. Confidentiality

12. All members of the Commission and all of its support staff shall exercise the utmost discretion during all stages of its work and thereafter. They shall refrain from taking a public stand, or otherwise making public statements, including in a personal capacity or on social media platforms, regarding their work and the activities of the Commission. The Chair of the Commission may decide to make available to the public non-confidential information on the work of the Commission, to the extent necessary and appropriate.

VI. Relationship with the United Nations Multidimensional Integrated Stabilization Mission in Mali

13. Considering the key task of MINUSMA to support the establishment and the functioning of the Commission, consistent with its mandate under Security Council resolution 2364 (2017):

(a) The Commission shall consult with MINUSMA with a view to obtaining the assistance required for the accomplishment of its mandate, including assistance regarding logistical, administrative and security matters;

(b) MINUSMA may rely on the provisions of its status-of-forces agreement, signed on 1 July 2013, in respect of all the activities that it will undertake in support of the Commission, without any prejudice to the full and unhindered independence of the Commission.

VII. Consultations with the parties to the Mali Peace Agreement

14. The Commission shall be free to consult the Government of Mali and all signatory parties to the Mali Peace Agreement in the context of the finalization of its report to the Secretary-General, with due respect for confidentiality and all measures that it deems necessary for the protection of victims, all other persons who provided information to it, and their respective families.

15. The Secretary-General shall decide whether the final report of the Commission should be shared with the Security Council, the Government of Mali and other signatory parties to the Peace Agreement, in whole or in part. The Secretary-General shall further decide on any questions regarding access to the archives of the Commission as well as on any conditions that he deems necessary for such access, consistent with the Secretary-General's bulletin on information sensitivity, classification and handling (ST/SGB/2007/6 of 12 February 2007).

VIII. Date of establishment

16. The Commission shall be deemed to have been established on the day that its three independent expert members are designated.